

REMARKS

Applicants have carefully reviewed the Application in light of the Office Action mailed December 16, 2008. Claims 12-22 are pending in this Application. Claims 12-22 stand rejected under 35 U.S.C. § 103(a). Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 103

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Independent Claim 12 is Allowable

Claims 12-15, 17-18, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,393,007 issued to Jacobus C. Haartsen (*Haartsen*) in view of U.S. Patent No. 6,275,506 issued to Khaled Fazel *et al.* (*Fazel*). Also, Claims 16, 19-20, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of *Haartsen*, *Fazel*, U.S. Patent No. 5,896,375 issued to Paul W. Dent *et al.* (*Dent*), and U.S. Patent No. 5,864,755 issued to Neal J. King *et al.* (*King*).

The cited references each fail to teach or suggest the pending claims. For example, Independent Claim 12 recites, in part:

- allocating a unique identifying frequency to each of a plurality of radio transmitters and radio receivers;
- detecting whether a repeat time slot is used;
- performing frequency-slot separation on to-be-repeated data packets if the repeat time slot is detected, wherein the frequency-slot separation assigns the to-be-repeated data packets to a respective unique identifying frequency, and wherein the frequency-slot separation is carried out within the duration of the repeat time slot; and
- performing frequency selection in at least one of the radio transmitters and receivers wherein a repeated data packet is searched on the respective identifying frequency

Haartsen fails to teach or suggest the above-recited elements. Referring to Column 4, Lines 16-19, as relied upon by the Examiner, *Haartsen* discloses a frequency hopping scheme. The application of a frequency hopping scheme allows each subsequent frame to be “transmitted in a subsequent radio frequency transmission channel, interference of data time slots is averaged over the radio frequency transmission band of the system.” Similarly, Column 5, Lines 47-51, as relied upon by the Examiner, *Haartsen* discloses that the “radio access units transmits at a common frequency transmission band.” (Emphasis added). In each of the above-relied upon sections, contrary to the Examiner’s assertion on Page 3 of Office Action, *Haartsen* fails to teach or suggest allocating a unique identifying frequency to each of a plurality of radio transmitters and radio transceivers. Rather, *Haartsen* makes it clear that the transmitters (*e.g.*, radio access units) can transmit on any common frequency transmission band. The only thing that is assigned to the radio access units is “an individual radio frequency transmission channel hopping sequence” which is not a unique identifying frequency. (Column 5, Lines 50-51).

Haartsen also fails to teach or suggest detecting whether a repeat time slot is used. Referring to the section relied upon by the Examiner, *Haartsen* discloses that if a “reception is in error, a retransmission request is send [sic] from the receiver to the transmitter, immediately after receipt of the erroneous data and in the same frame.” (Column 8, Lines 9-11). A retransmission request that is sent is not equivalent to *detecting whether a repeat time slot is used*, as recited in Independent Claim 12.

Referring to Column 8, Lines 56-59, the Examiner contends the cited section teaches performing a frequency-slot separation on to-be-repeated data packets if the repeat time slot is detected. *See* Page 3 of the Office Action. Applicants disagree. In this section, *Haartsen* discloses “time slots A, B, C are assigned to voice communication channels, whereas time slots d provide data communication.” The assignment of various time slots for different types of communication (*e.g.*, voice and data communication) does not expressly or inherently teach or suggest performing a frequency-slot separation on to-be repeated packets, much less whether or not a repeat time slot was detected.

The Examiner also contends that in Column 10, Lines 35-39, *Haartsen* discloses that alleged frequency-slot separation is carried out with the duration of the repeat time slot. As noted above, the Examiner has failed to show that *Haartsen* teaches or suggest a frequency-slot separation. According to *Haartsen*, applying a frequency hopping scheme is done “by providing the available radio frequency transmission band in a plurality of frequency transmission channels and by causing subsequent frames to be transmitted in subsequent transmission channels.” No where in the relied section does *Haartsen* teach or suggest performing frequency-slot separation on to-be-repeated data packets if the repeat time slot is detected, wherein the frequency-slot separation assigns the to-be-repeated data packets to a respective unique identifying frequency, and wherein the frequency-slot separation is carried out within the duration of the repeat time slot, as recited in Independent Claim 12. *Haartsen* merely provides the division of the frequency band across the frequency transmission channels.

Fazel also fails to teach or suggest the above-recited elements of Claim 12 as noted in Applicants’ Response filed on January 3, 2006. However, the Examiner still maintains that *Fazel* discloses performing frequency selection in at least one of the radio transmitters and receivers wherein a repeated data packet is searched on the respective identifying frequency. Applicants disagree. Referring to Column 10, Lines 34-44, as relied upon by the Examiner, *Fazel* discloses receiving data searches at a terminal by “comparing its own cluster identifier number with all the available frame structures...If its own cluster identifier number is detected, it searches for a request in all the check channels by checking the terminal identifier

number.” No where in the cited passage does the terminal perform frequency selection nor does the terminal search for a repeated data packet on a respective identifying frequency.

Both *Dent* and *King* also fail to disclose the above recited elements of Claim 12. Therefore, Claims 16, 19-20, and 22 are patentably distinct based at least on their dependency of allowable Claim 12.

For at least these reasons, Independent Claim 12 and all claims that depend therefrom, are patentably distinct over the cited references. Applicants respectfully request withdrawal of the rejections under 35 U.S.C § 103(a) and full allowance of all pending claims.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants enclose a Petition for Two Months Extension of Time and authorize the Commissioner to charge the \$490.00 Extension fee to Deposit Account No. 50-2148 of Baker Botts L.L.P. Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2684.

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